

SUMMARY OF IHSS LAWSUITS

Beckwith/Ellis v. Wagner, et al

Issue: All Felonies

On November 13, 2009, seven IHSS providers and one recipient filed a lawsuit challenging the policy of the State whereby any person convicted of a felony or serious misdemeanor is precluded from providing IHSS services. CDSS took this position based on Welfare & Institutions Code (WIC) sections 12305.81 and 14123, and federal Medicaid and state Medi-Cal statutes and regulations. Plaintiffs argue that CDSS has no authority to preclude the individuals at issue from providing services. On November 24, 2009, the Court issued a temporary restraining order (TRO), prohibiting the State from disqualifying providers on the basis of a conviction of any felony or serious misdemeanor but does not prevent disqualifying providers convicted of the crimes listed in WIC 12305.81. The TRO was recently found to be procedurally defective by the Court of Appeal and a follow-up hearing before a new judge took place on January 22, 2010. On February 9, the trial court issued an order against the state defendant, finding that it could not reconcile the "all felonies" policy with other statutory provisions that reference the specific enumerated crimes. CDSS is considering its legal options in light of this order; in the meantime, counties and Public Authorities will continue to screen for only the enumerated crimes, and not all felonies, which has been the practice since the original TRO was issued.

Oster (previously V.L.) v. Wagner, et al

Issue: Functional Index Score/Rank

After the Legislature and the Governor approved the reduction in services for IHSS recipients as part of the Budget Act in Assembly Bill (AB) X4 4, individual recipients of In-Home Supportive Services (IHSS) and various chapters of the Service Employees International Union (SEIU) brought this suit to prevent the implementation of changes to Welfare and Institutions Code sections 12309(e) and 12309.2 that would reduce services. The changes would have required that applicants/recipients of IHSS have a calculated Functional Index (FI) Score of at least 2.00 before services could be authorized. In addition, ABX4 4 mandated that domestic and related services be authorized only for those individuals with a substantial need for that specific service based on a FI Rank of at least 4 in that functional area.

Plaintiffs assert that implementation of the provisions at issue would violate Medicaid requirements, among other federal laws. Plaintiffs also allege that the statutory changes improperly discriminate against children and people with mental disabilities. Plaintiffs further allege that the Notices of Action that would have been sent to IHSS recipients to notify them of the reduction or termination of their services was inadequate.

The judge granted a preliminary injunction on October 19, 2009. CDSS appealed this ruling, and the Ninth Circuit has set oral argument for June 15, 2010.

On March 2, 2010, the United States (US) filed an amicus brief, siding with the plaintiffs, on the specific issue of whether institutionalization is a prerequisite to establishing an Americans with Disabilities Act (ADA) violation. The US asserts that California's position is not consistent with the ADA, and that a party need not be institutionalized or be at imminent risk of institutionalization. Instead, the US advocates that the Ninth Circuit should find that a party can bring an ADA action if an injury may occur as a result of defendant's action, and that such actions may create a serious risk of being unnecessarily institutionalized.

Dominguez (previously Yang/Martinez) v. Schwarzenegger, et al
Issue: Wage Reduction

After the Legislature and the Governor approved the reduction in the State's participation in wages/benefits in the February 2009 Budget Act, the SEIU and other parties filed a lawsuit against the reduction. On June 26, 2009, the U.S. District Court issued a preliminary injunction against the reduction in the State's participation, citing that an analysis required by 42 U.S.C. § 1396a(a)(30)(A) must first be completed. The court amended the injunction in July 2009 and required counties to change their wages and benefits to pre-July 1, 2009 levels. Until the injunction is lifted, the State continues to participate in wages and benefits up to \$12.10. On August 7, 2009, an appeal of the injunction was filed with the US 9th Circuit Court of Appeal.

On March 3, 2010, the appellate court upheld the lower court's injunction, ruling that 42 U.S.C. § 1396a(a)(30)(A), which requires the State to conduct or rely on studies regarding efficiency, economy and quality of care when setting provider reimbursement rates, applies to the State's enactment of the wage reduction. The court held that although the State does not set the reimbursement rates, it is required to conduct a pre-reduction study regarding its funding of the reimbursement rates that are set by the counties due to the impact the funding has on the collective bargaining agreement. Finally, the court held that the injunction was appropriate due to the irreparable harm that IHSS providers would suffer under the statute.

A petition with the United States Supreme Court has been filed, and it is expected that if the Supreme Court agrees to hear the case, oral argument will be set in the Fall 2010 session.

Northern California ADAPT v. CDSS, et al
Issue: Share-of-Cost Buyout

In this case, various advocacy groups and IHSS recipients have filed for a preliminary injunction in San Francisco Superior Court. Plaintiffs are requesting that the court reinstate the program whereby CDSS made payment for medically recognized expenses (MRE) to IHSS recipients, even though this program terminated on October 1 pursuant to ABX4 4. This program is also informally known as the share-of-

cost buyout program. Plaintiffs contend that recipients were not given proper notice of the termination of the program for a variety of reasons, including that the notices were only sent in English and that recipients could not understand the content of the notices.

On November 30, the court denied plaintiffs' request for preliminary injunction. After plaintiffs filed an amended complaint, the state filed a motion to dismiss. The hearing on the motion has not yet been set.

Putz v. Schwarzenegger, et al

Issue: Public Authority Administrative Funding Reduction

On January 25, 2010, four IHSS recipients and two non-profit advocacy groups, the California Association of Public Authorities and the California In-Home Supportive Services Consumer Alliance, filed a class action lawsuit in federal court, challenging AB X4 1's reduction to Public Authorities' funding.

Plaintiffs argue that the Public Authorities' operations and services constitute "care and services" for the purpose of the Medicaid Act and the State Plan and that, therefore, AB X4 1 is preempted by federal Medicaid law, which requires that the State consider how any proposed changes affect efficiency, economy, quality of care, and access to services. Plaintiffs also argue that the reductions violate the Americans with Disabilities Act and the Rehabilitation Act, and that the Governor's veto of portions of AB X4 1 violated Article IV, section 10(e) of the California Constitution. A hearing on plaintiffs' preliminary injunction went forward on April 15, 2010, and CDSS is awaiting a ruling.